IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY THIRD DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 13278 of 2004

Between:

M/s.Aurobindo Pharma Ltd., a company incorporated under the Companies act, 1956 having its regd.and admn. office at plot No.2, Maitrivihar, Ameerpet, Hyd. being rep., by its Manager-Legal and G.P.A.Holder Mr.K.K.Sastry,
s/o K.R.Sastry, r/o O/o M/s.Aurobindo Pharma Ltd., Ameerpet, Hyderabad.

..... PETITIONER

AND

1 M/s.Transmission Corporation of A.P.Limited (APTRANSCO) a company incorporated under the Companies Act, 1956 and wholly owned by Government of A.P., being represented by its Managing Director, Vidyut Soudha, Khairatabad, Hyderabad.
2 The Director (Commercial), M/s.Central Power Distribution Company of A.P.Ltd., (APCPDCL), Singareni Bhavan, Red Hills, Hyderabad.
3 The Superintending Engineer, Operation Circle, M/s.Central Power Distribution Company of A.P.Ltd., (APCPDCL) Sangareddy, Medak.
4 Senior Accounts Officer, Operation Circle, M/s.Central Power Distribution Company of A.P.Ltd., (APCPDCL), Sangareddy, Medak.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly are in the nature of mandamus by declaring the proposed action of respondents vide Letter No.SE/OP/MDK/SAO/HT/D.No.359 dt.16/6/2004 issued by respondent No.3 herein for levy and collection of Demand charges at 12% extra over normal rate and Energy charges at 10% extra over normal rate by revising the monthly bills from 11/7/2003 and also in the monthly bills to be issued from July, 2004 to the petitioner's service connection MDK-644, existing at petitioner's unit situated at Chitkul Village, Patancheru Mandal, Medak District, as arbitrary, illegal and violative of Article 14 of the Constitution of India, and consequentially pass orders for refund of the amount illegally levied and collected through monthly bills in respect of the above periods if any together with interest

Counsel for the Petitioner: MR.M.LAXMINARASIMHAM

Counsel for the Respondents : SMT.M.VINOBHA DEVI

The Court made the following :

ORDER:

Heard the both sides and at their request the main writ petition itself is taken up for disposal.

The petitioner herein is a company, which is seeking to assail the impugned letter of demand dt. 16-6-2004 issued by the respondent No.3 for levy and collection of demand charges at 12% extra over normal rate and Energy charges at 10% extra over normal rate by revising the monthly bills from 11-07-2003 onwards by filing the present writ petition.

The case of the petitioner, in brief, is that having regard to the earlier entire correspondence and also the specific agreement dated 08-08-2002 entered into between the parties, the entire supply and process is only through 11 KV and therefore its liability can be restricted under such supply. Further, in the impugned demand, the energy charges is sought to be revised and the demand is being made at a higher rate on the ground that the supply is not through a “dedicated feeder” and further the petitioner is not inclined to entitlement of availing the supply at 11 KV voltage. Having regard to the consumption, which is only through a 11 KV voltage, the petitioner’s liability can be restricted and not beyond that.

However, the learned standing counsel appearing on behalf of the respondents submits that admittedly in view of the quantum of supply, the petitioner will not fall within the voltage of 11 KV but only falls under the voltage of 33KV. Therefore, even as per the condition imposed in Tariff Order the petitioner cannot seek any such indulgence to pay the amounts as if the supply is under 11 KV voltage.

Having considered the submissions made and also on perusal of the material, it is seen that there is no serious dispute in regard to the earlier agreement and the terms and conditions

entered into between the parties for supply at 11 KV voltage and the impugned order only comes thereafter on the ground that the supply has to be only through 33 KV and further the said supply is not through the dedicated feeder and these facts are come to know subsequently. On a reading of the entire impugned order, it is seen that the petitioner has not been given any notice or opportunity or any enquiry is held in respect of the grounds on which the revised demand is sought to be made. Having regard to the fact that there is a written contract between the parties for supply at 11 KV, any variation therein in regard to supply and the demand for any such charges would vary with the existing terms and conditions, even if the petitioner is not entitled to as per the Tariff order or otherwise, he is entitled to a notice and opportunity. Since, no such opportunity has been provided and no enquiry is conducted, the impugned demand is totally in the teeth of the principles of natural justice.

The writ petition is accordingly allowed. The impugned letter of demand is set aside. It shall, however, be open for the respondents herein to issue a fresh notice, and after providing opportunity, pass orders determining the liability of the petitioner. It shall, however, be open for both sides to file appropriate material or evidence in support of their respective contentions. Till that time, the petitioner shall pay the charges as if the supply is at 11 KV. No costs.

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B. PRAKASH RAO, J

Dt. 23-08-2004

KVRK

To

1 Managing Director , M/s. Transmission Corporation of A.P.Limited (APTRANSCO) a company incorporated under the Companies Act, 1956 and wholly owned by Government of A.P., Vidyut Soudha, Khairatabad, Hyderabad.

2 The Director (Commercial), M/s. Central Power Distribution Company of A.P.Ltd., (APCPDCL), Singareni Bhavan, Red Hills, Hyderabad.

3 The Superintending Engineer, Operation Circle, M/s.Central Power Distribution Company of A.P.Ltd., (APCPDCL) Sangareddy, Medak.

4 Senior Accounts Officer, Operation Circle, M/s.Central Power Distribution Company of A.P.Ltd., (APCPDCL), Sangareddy, Medak.

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